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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Professor Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with paragraph 16 of the Commission on Human Rights resolution 1993/73 of 10 March 1993 and Economic and Social Council decision 1993/278 of 28 July 1993.

ANNEX

Interim report on the situation of human rights in Myanmar prepared by Professor Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1993/73 and Economic and Social Council decision 1993/278

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I. INTRODUCTION

1. On 10 March 1993, at its forty-ninth session, the Commission on Human Rights adopted resolution 1993/73 entitled "Situation of human rights in Myanmar" without a vote. In paragraph 16 of the resolution, the Commission decided to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers, and requested him to report to the General Assembly at its forty-eighth session and to the Commission at its fiftieth session. The present report, which was finalized on 26 October 1993, is being presented in accordance with that request.

2. In that resolution, the Commission noted the visit of the Special Rapporteur in December 1992 and deplored the continued seriousness of the situation of human rights in Myanmar, in particular the fact that a number of political leaders, including Daw Aung San Suu Kyi and other leaders of the National League for Democracy, remained deprived of their liberty, and that in spite of the provisions of Commission resolution 1992/58 of 3 March 1992 requesting the Myanmar authorities to extend their full and unreserved cooperation to the Special Rapporteur, he was denied access to some persons, in particular detainees, including Daw Aung San Suu Kyi, and that a number of persons wishing to provide testimony were subjected to intimidation or harassment.

3. In the resolution the Commission expressed its deep concern at the violations of human rights in Myanmar, which remained extremely serious, in particular those concerning the practice of torture, summary and arbitrary execution, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detentions, the existence of important restrictions on the exercise of fundamental freedoms and the imposition of oppressive measures directed, in particular, at minority groups which have resulted in flows of refugees towards neighbouring countries and the absence of guarantees for the physical integrity and well-being of returnees to Myanmar.

4. The Commission also noted with concern that the meetings of the National Convention to prepare the basic elements for the drafting of a new constitution have excluded most of the representatives duly elected in 1990 and that one of the objectives of the Convention has been to maintain the participation of the armed forces (Tatmadaw) in a leading role in the future political life of the State.

5. The Commission urged the Government to take every appropriate measure to allow all citizens to participate freely in the political process in accordance with the principles of the Universal Declaration of Human Rights and to accelerate the process of transition to democracy, in particular through convening the Parliament elected in May 1990, lifting restraining orders placed on a number of political leaders, releasing those who are detained, ensuring that political parties can function normally and lifting restrictions on the right of association and assembly, as well as the right to freedom of opinion and expression, to restore the protection of persons belonging to minority groups especially in the framework of citizenship laws and to put an end to

violations of the right to life and integrity of the human being, to the practices of torture, abuse of women, forced labour, enforced disappearances and summary executions.

6. At its substantive session of 1993, the Economic and Social Council adopted decision 1993/278 approving Commission resolution 1993/73.

Visit to Myanmar by the Special Rapporteur

7. In September 1993, the Special Rapporteur addressed a letter to the Government of Myanmar requesting to visit the country from 9 to 16 November 1993. He requested the honour of audiences with high governmental officials, meetings in circumstances providing full confidentiality with political leaders, including those in detention or under restriction, and in particular with Daw Aung San Suu Kyi. The Special Rapporteur further requested full and free access to all individuals, non-governmental and intergovernmental, whom he may deem necessary to the carrying out of his mandate or who express the will to meet with the Special Rapporteur. Visits to prisons and other centres of detention, with confidential contact with those detained, were also requested.

8. The Special Rapporteur also requested full access to other areas of the country, in particular Rakhine State for the purpose of carrying out unrestricted and confidential visits with the recent repatriates and returnees.

9. By a letter dated 15 September 1993, the Government replied that the Special Rapporteur would be welcome in Myanmar.

10. By a letter dated 8 October 1993, the Government further replied that the proposed dates for the visit of 9 to 16 November 1993 would be agreeable.

11. The Special Rapporteur also foresees carrying out a visit to Thailand from 16 to 20 November 1993.

II. MEMORANDUM OF ALLEGATIONS TO THE GOVERNMENT OF MYANMAR

12. By a letter dated 30 September 1993 to the Minister for Foreign Affairs of the Union of Myanmar, the Special Rapporteur transmitted the following memorandum of allegations received by him of human rights violations reported to have occurred in Myanmar:

"A. Arbitrary detention

"1. In regard to arbitrary detention, the Special Rapporteur welcomes reports that over 1,700 persons detained under the emergency regulations have been released since April 1992.

"2. Allegations have nevertheless been received that under the persistent State Law and Order Restoration Council (SLORC) orders and other emergency decrees, numerous persons have been arrested for criticizing SLORC, the army (Tatmadaw) or for openly criticizing the process being undertaken in

the National Convention for the drafting of a new constitution and the transfer of power to a civilian government. Reports indicate that up to 60 persons may have been detained since July 1993 for engaging in political activity although many of these have now been released.

"3. Some persons were reportedly detained without charges, while others have reportedly been sentenced to lengthy terms in trials which did not afford the minimum standards of judicial guarantees as set out under articles 10 and 11 of the Universal Declaration on Human Rights. In this regard, it has been alleged that in December 1992 the following persons were arrested for printing and distributing leaflets criticizing the National Convention: U Aung Myint, aged 57, Daw Khin Mar Aye, aged 53, and Htay Myint (alias Khin Soe), aged 37.

"4. In January 1993, 14 persons were allegedly arrested for having distributed leaflets which were, according to the Government, 'aimed at obstructing the National Convention and undermining peace and tranquillity in the country'. In August, Dr. Aung Khin Sint, the elected NLD representative for the Mingala Taungnyunt-1 constituency and his assistant, U Than Min, were allegedly arrested for being 'engaged in unscrupulous activities with intent to undermine the National Convention'.

"5. The Special Rapporteur has received allegations of arrests of the following persons in the Yangon area in August 1993 in connection with the National Convention: Ma Thi Da; Nay Thin Myint; Bo Lay; Thet Oo; Tin Htune; Khin Maung; Kyaw Than; Kyi Myint and Than Min.

"6. These persons are allegedly being detained in Insein prison. It is not known if formal charges have been drawn or if a minimum level of judicial guarantees has been accorded. It is also not known if the families of these persons have been notified.

"7. Other reports have been received, in some cases supported by photographic evidence, of large portions of entire villages being detained for 'defying Governmental authority' by having refused displacement or, as in the case of over 100 villagers in the Irrawaddy Delta, for refusing to turnover rice crops to the military.

"8. The Special Rapporteur would appreciate the Government providing information regarding the detained persons described above, their places of detention, the formal charges lodged against them, the judicial guarantees accorded them before, during and after trial, the sentences received and whether these persons are allowed regular visits by their families and legal counsel.

"B. Torture, cruel, inhuman or degrading treatment

"9. Extensive allegations have been received that torture and other cruel, inhuman or degrading treatment has continued to be used by the Myanmar army (inter alia, the 99th Light Infantry Division and the 301st Battalion), police and intelligence services, that such practices have been used routinely in the interrogation of persons and the treatment of porters,

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forced labourers and members of ethnic minorities. It has been alleged that the practices in prisons include poor sanitary conditions, shackling, beatings, sleep, food and water deprivation, electric shock, the use of falanga, near suffocation and psychological torture, including threats of death to the individual and his family.

"10. In the context of military operations, forced relocation, portering and forced labour, the practices allegedly involve the carrying of heavy supplies up mountains and in extreme weather conditions, beating, stabbing, pouring salt or other toxic material into open wounds, drowning, rape, burning and mutilation before execution. It has also been alleged that men, women and adolescents of ethnic minorities continue to be used as mine sweeps and to be forced to precede army battalions so that they will not be attacked by opposition forces.

"11. Please respond to these allegations, indicating what steps have been undertaken to comply with the prohibition against these practices as encompassed by article 5 of the Universal Declaration of Human Rights, article 3 common to the Geneva Conventions of 1949, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975). Please indicate whether dissemination of these principles within the operational security forces has been undertaken. Please detail any independent or Government investigations which may have been carried out in regard to these allegations, whether any military or security personnel have been tried and sentenced, dismissed from duty or otherwise disciplined for their part in any established violations.

"C. Disappearances

"1. Disappearance after mass demonstrations and in connection with the National Convention

"12. Since he was appointed in March 1992, the Special Rapporteur has continually received allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons, including students, monks, workers, writers, professors and others, were arrested or shot to death and that the whereabouts of many of these persons have never been established. It is believed that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an army base near the airport and in the new township, Hlaing Thaya.

"13. Several friends and relatives of missing persons told the Special Rapporteur during his visit to Myanmar that they had not been able to transmit cases to him or to the Working Group on Enforced or Involuntary Disappearances because of a lack of knowledge of the available international mechanisms, a lack of experience in preparing the information for cases and a serious concern for their own physical safety.

"14. It has been reported that many of the persons detained recently for their activities in connection with the National Convention have been held in incommunicado detention and that generally these detentions remain unacknowledged for at least a period of time after the detention.

"15. Please indicate whether any steps have been taken by the Government to investigate the whereabouts of the alleged missing persons; if there are any institutions or Governmental organs set-up to address the question of disappearances, whether any legal or administrative procedures for the purpose of clarification (such as habeas corpus) are available to the relatives of missing persons, the number of times these remedial procedures have been used and to what effect. Please indicate whether any regulations exist requiring security forces and/or those responsible for prisons or other detention centres to maintain a register and to report the particulars of all persons under detention.

"16. Please indicate whether there is a prohibition under law against unacknowledged or incommunicado detention and whether certificates of death are required by law, whether the cause of death is mandatory on the certificate and if the certificate is accessible to the relatives of the deceased.

"2. Disappearance in the context of forced portering

"17. Other reports continue to be received of persons disappearing after having been abducted by the army throughout the country to function as porters for the army or as labourers on construction projects.

"18. Please comment on these general allegations indicating whether security force personnel are under an obligation to report to their superiors or to an administrative body the names of all persons detained by them or placed under their custody for whatever reason.

"D. Summary or arbitrary execution

"19. As noted in his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur welcomed the fact that all death sentences have been commuted to life imprisonment. 1/ Reports however, of extra-judicial executions have been continually received since the 1992 visit to Myanmar by the Special Rapporteur. These have allegedly been carried out particularly against ethnic minorities. In 1993, the Tatmadaw did not launch a dry-season offensive, yet extra-judicial executions by the Tatmadaw of hundreds of ethnic civilians were reported to have taken place outside areas of conflict.

"20. The reports focused on executions of civilians accused of being insurgents or of providing aid to insurgents, of civilians in one village as retaliation for attacks on the Tatmadaw in another area, of whole families or even entire villages that resisted relocation. In other cases, some persons were allegedly executed when they resisted becoming porters for the army or labourers on military construction projects. Some village

head-men were also reportedly executed for not providing the requisite number of porters or labourers as demanded by the army.

"21. Among the allegations received were the extra-judicial executions of scores of Mon persons resisting relocation in five villages in Yebyu Township in February 1993 and in seven villages in Thanbuzayat Township in March 1993. Eye-witness accounts were received from Klaingbwe Township of retaliation killings of Kayin people and from Kyauk Kyi Town, in Nyaunglebin District, Pegu Division, of Kayin persons resisting relocation. In this case, the allegations were consistent with the copies of relocation orders allegedly issued by the army, which were received by the Special Rapporteur.

"22. Eye-witness accounts from Papun, Pa'an and Thaton Districts are consistent in alleging that hundreds of Karen villagers were shot or beaten to death by the Tatmadaw, including children and persons over the age of 65 accused of being insurgents, many while portering, refusing to relocate, refusing to give rice, livestock or money to the army, for escaping rape or in retaliation for or in lieu of another family member or villager.

"23. The Special Rapporteur has also received allegations that similar extra-judicial executions of the Shan and Kayah ethnic groups are taking place and that extra-judicial executions of hundreds of Myanmarese Muslim porters continue.

"24. The Special Rapporteur would appreciate receiving information describing any investigations into these allegations undertaken by the Government. Please detail any steps taken internally by the military or by the civilian authorities, legal or otherwise, to prevent or curtail the occurrence of extra-judicial executions in contravention of article 3 of the Universal Declaration of Human Rights and article 3 common to the Geneva Conventions. Please indicate whether any military personnel have been tried and sentenced, dismissed from duty or otherwise sanctioned for their part in any verified violations, if the Code of Criminal Procedure provides for sanctions for these violations, what remedies it may provide for the relatives of the victims and if any such petitions have been brought and to what effect.

"E. Repatriated Muslims from Northern Arakan State

"25. It is reported that over 35,000 Myanmar Muslims have now been repatriated or returned, the most recent of these repatriations with the participation of the United Nations High Commissioner for Refugees screening for the voluntary character of the repatriations. Reports concerning the status of the repatriated persons assert that they have not been allowed to return to their villages of origin and have been forcefully resettled in villages prepared by the Government.

"26. It is further reported that their residency and/or nationality status remains unclear, that most have not received identification cards and therefore are not free to travel, enrol in learning institutions or

reportedly, in some cases, apply for jobs. It has been alleged that they are segregated from other groups and are not allowed to travel freely.

"27. Reports continue to be received of wide-scale forced recruitment of Muslims from Arakan State for portering and labour.

"28. Please comment on the above-mentioned allegations indicating in detail the sites of resettlement, what the nationality and/or residency status is of the returnees and repatriates and what rights under law are applicable to them.

"F. Labour rights

"29. In regard to International Labour Organization (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organize of 1948, which was ratified by Myanmar in 1955, the following comments and observations made during the course of the eightieth session of the ILO Committee on the Application of Standards, held at Geneva in June 1993.

"30. A Government representative stated the position of the Government that the purpose of the National Convention for the drafting of a new constitution was to lay down the basic principles (of a new constitution) that would ensure fundamental rights, including those of workers. After the emergence of the new constitution, various laws would have to be reviewed so as to be brought into line with it. However, during the transitional period, the workers' rights were being ensured by the legislation still in force. At the same time, labour laws reflecting the democratic principles pertaining to workers had been drafted.

"31. He stated that new labour laws reflecting the principles of the Convention, to which the Government had referred in last year's report, and which replaced old ones concerning the formation of workers' organizations, had been submitted to the appropriate authorities and were now under consideration. His Government would inform ILO in due course of progress in the framing of the new Constitution and the new labour laws.

"32. The Government representative opposed the allegation that elected representatives had been imprisoned and stated that the single trade union no longer existed and that steps had been taken to adopt legislation which would take into account the principles of freedom of association. The Government representative also stated that the 'so-called trade union operating on the border areas was a creation of terrorist groups outside the territory of Myanmar and did not represent any worker in Myanmar'.

"33. The workers were of the opinion that there still was no freedom of association in the country and that there was hardly any trade union movement; trade unionists who criticized the Government were allegedly imprisoned. It was further noted that the members of Parliament freely elected in May 1990 had not been allowed to convene and that many were in prison, had been disqualified or had fled the country.

"34. It was pointed out that the extant legislation (1976), which the Government representative had cited as being in force during the transitional period, provided for a monopoly of trade union rights as well as for a monopoly of the practice of trade union activities, which represented a 'clear infringement of the Convention'. The arrest of some labour activists was pointed out, as well as the continued practice of forced labour.

"35. Please indicate what measures have been taken to comply with the obligations undertaken under ILO Convention No. 87 and explain what workers rights are protected under the present legislation and what lawful trade unions or other syndicates presently exist. Further indicate, please, if the right of five or more persons to congregate and associate freely is presently protected under law. Please indicate what measures have been taken to comply with the obligations under ILO Convention No. 29 prohibiting the practice of forced portering and other forced labour, what prohibition against forced portering or labour exists under the present law and what rights of redress are available to alleged victims of such practices. Please indicate the number of times that these procedures for redress have been resorted to and to what effect.

"G. Rights of the child

"36. In 1989, Myanmar became a party to the Convention on the Rights of the Child. At the time of its ratification, a number of understandings and reservations were deposited pertaining to article 37 thereof on the prohibition of torture, cruel, inhuman or degrading treatment in regard, inter alia, to the treatment of children during interrogation. In his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur recommended that the Government consider withdrawing its reservations and understandings to article 15 of the Convention on the Rights of the Child regarding freedom of association and to article 37 regarding the prohibition of torture of minors. 2/

"37. Please indicate what steps have been taken in response to those recommendations.

"H. The National Convention

"38. In regard to the National Convention, it has been reported that of the 702 delegates from 8 categories of people, 49 were selected by the 10 political parties remaining after the elections, 106 were elected representatives and the remainder of the delegates from the other six categories were chosen by the State Law and Order Restoration Council (SLORC).

"39. It has been further reported that the draft principles or guidelines for discussion during the Convention were to remain within a framework of the following objectives: (a) non-disintegration of the union; (b) non-disintegration of national solidarity; (c) consolidation and perpetuity of sovereignty; (d) emergence of a genuine multi-party

democratic system; (e) development of eternal principles of justice, liberty and equality in the State; and (f) participation of the Tatmadaw in a leadership role in the national politics of the future; and that this framework for discussion was determined by SLORC and that the discussions were to remain exclusively within these guidelines. Wearing badges, distributing leaflets or disseminating propaganda were reportedly prohibited.

"40. It has been further reported that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions, and that in the political parties group, only one chairman (U Tha Zan Hla) was from the National League for Democracy (NLD), the party that won the majority in the May 1990 elections. In the elected representatives group, where 89 of the remaining 105 delegates were from NLD, no NLD representatives were selected as chairmen.

"41. It has been further alleged that since the beginning of the National Convention, numerous participants have been disqualified or arrested for allegedly contravening these guidelines and particularly for having questioned the leadership role foreseen for the Tatmadaw. When the Convention reconvened in June 1993, statements were allegedly read out by Chairman Major General My Nyunt and U Aung Toe to the effect that, there should be a strong President who should be able to carry out his responsibilities 'without constraints' in working for the development of the country, and that this person should be 'an indigenous citizen who is loyal to the nation and its citizens'. Several persons have allegedly since been arrested for challenging these concepts, and some have been charged with participating in activities intending to undermine the National Convention (see paras. 1-8 above).

"42. The Special Rapporteur would appreciate information from the Government regarding these allegations, indicating what steps have been taken to comply with the results of the elections of May 1990.

"I. Rights devolved from citizenship status

"43. Information received by the Special Rapporteur has indicated that the citizenship laws of Myanmar are unclear, vague, inconsistent, inaccessible to the public and inequitably applied. 3/ Inability to obtain nationality or not belonging to one of the many tiers of residency status applied throughout Myanmar, have allegedly excluded entire groups, particularly from the ethnic minorities, from enjoying a range of civil, political, social, cultural and economic rights and protections.

"44. Among the rights allegedly rendered inaccessible, is the right to education. The right of every citizen to education was incorporated into the 1974 Constitution. Under the 1980-1981 regulations of the Ministry of Education regarding access to university, the applicant must satisfy four requirements: being a 'Burmese National'; passing prescribed exams; having a 'good character'; and being in good health. These requirements have allegedly been used to ban students disapproved of by the authorities. Particularly cited as being singled out for such discrimination are the

ethnic Indians, Bangladeshi and Chinese, even when they, and at times even their parents, were born in Myanmar. Only those with full citizenship are reportedly allowed to prepare for certain higher professional careers, including medicine and technology. Ethnic minority students have also reportedly found it difficult or impossible, particularly without proper identification cards, to travel to the major cities to attend institutions of higher learning.

"45. The Special Rapporteur would appreciate information from the Government delineating the differences among the various nationality and residency statuses and the corresponding rights and obligations.

"J. Steps to improve the human rights situation

"46. The Special Rapporteur would appreciate receiving information regarding any steps taken by the Government to improve the situation of human rights in Myanmar since his last visit.

"K. Social, cultural and economic rights

"47. Please detail any steps taken by the Government to increase the enjoyment of the social, cultural and economic rights of the people of Myanmar including any recent economic developments which the Government may wish to bring to the attention of the Special Rapporteur."

III. INFORMATION RECEIVED SUBSEQUENT TO THE MEMORANDUM OF ALLEGATIONS OF 30 SEPTEMBER

A. Arrests and detentions

13. Information was received regarding the arrests of 14 persons in connection with the National Convention. The Special Rapporteur on the situation of human rights in Myanmar and the Chairman of the Working Group on Arbitrary Detention transmitted, on 12 October 1993, to the Minister of Foreign Affairs of Myanmar, the following letter regarding these arrests and the trials of some of those arrested:

"We have the honour to address you jointly in our respective capacities as Special Rapporteur on the situation of human rights in Myanmar and as Chairman-Rapporteur of the Working Group on Arbitrary Detention, appointed by the Commission on Human Rights in its resolutions 1993/73 and 1991/42 of 5 March 1991, respectively.

"In this connection, we wish to draw your attention to information we received regarding the following persons:

1.	MA THI DA	NLD Member
2.	U KHIN MAUNG	NLD representative from Kyu Athada
3.	U KYI MYINT	NLD representative from Latha
4.	U KYAW THAN	NLD representative

5.	U LWIN OO	NLD representative from Kyu Athada
6.	U WIN KYI	NLD representative from the Third Kamandeen
7.	NE THIN MYINT	NLD member
8.	BO LAY	Student
9.	THET OO	Student
10.	NE WIN	Student
11.	U THIN THUN	National Convention Representative
12.	U HAN SIEN	National Convention Representative
13.	MYU WIN	
14.	THAN MYIN	

"It has been brought to our attention that the above-mentioned persons were allegedly arrested on or about 3 September 1993 and detained at Insein Prison on charges of: (a) printing material without a permit; (b) distributing illegally printed matter; (c) committing acts against State security and, in the case of Ma Thi Da, for maintaining contacts with illegal organizations.

"It has further been reported that Ma Thi Da and Myu Win were brought to trial, the latter on 7 July 1993 where he was subsequently sentenced to a five-year term of imprisonment. The other above-cited persons are reportedly to stand trial beginning on 11 October 1993.

"Without in any manner wishing to prejudge the decision eventually to be taken by the Working Group as regards the arbitrary character or otherwise of the arrest and detention of the above-mentioned persons, we should like to appeal to your Government to do its utmost to ensure that the judicial guarantees provided for by the Myanmar Penal Code and the Code of Criminal Procedure and applicable to all persons detained for the Commission of a crime for which the punishment may be imprisonment for more than one year, and the relevant international standards, be applied to the above-mentioned persons, in particular the rights to be formally charged, to be informed of the charges being brought, to be defended by a counsel of his own choosing, to be granted a just and fair trial by a competent court and to have the right to appeal to a court in which a fair and impartial judgement may be held.

"In regard to the minimum basic international standards for judicial guarantees, we would like to recall in particular those embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

"It would be most appreciated if your Government could provide us forthwith with any information concerning the legal situation of the above-mentioned persons."

14. In this regard, the following information on the laws relevant to the above-mentioned cases had been provided during the previous reporting period by the Government of Myanmar:

(a) Under section 61 of the Code of Criminal Procedure, no police officer shall detain in custody a person arrested without warrant for a period longer

than 24 hours in the absence of a special order of a magistrate under section 167;

(b) If the investigation cannot be completed within this period, and it appears there are grounds to believe that the accusation or information is well-founded, the dossier of the case and the arrested persons are to be presented to the magistrate. For offences punishable with up to seven years, the person may be held for a period of up to 15 days. For offences where the term of imprisonment may be for more than seven years, the person may be held for a period of up to 30 days;

(c) Under paragraph 1198(3) of the Myanmar Police Manual, while under detention, a person is entitled to meet with and seek advice from a lawyer and is to have access to his family.

B. Courts and trials

15. The courts in Myanmar are constituted under the Judiciary Law of 1988. Under this law, appeals and revisions of the order and judgement of a court are permitted.

16. The administration of justice in Myanmar is based on the following principles:

(a) Administering justice independently according to law;

(b) Protecting and safeguarding the interests of the people and aiding in the restoration of law and order and peace and tranquillity;

(c) Educating the people to understand and abide by the law and cultivating in the people the habit of abiding by the law;

(d) Working within the framework of law for the settlement of cases;

(e) Dispensing justice in an open court unless otherwise prohibited by law;

(f) Guaranteeing in all cases the right to defence and the right of appeal under the law;

(g) Aiming at reforming moral character in meting out punishment to offenders.

17. After the 15- or 30-day investigatory period, a case must be sent to trial. Under section 340 of the Code of Criminal Procedure, a person has the right to engage a lawyer for his defence if he has not done so during the investigation by the police. The accused may apply for bail.

18. Cases are categorized as either summons cases or warrant cases. Summons cases are generally not of a serious nature and are punishable by a term of not more than six months. These cases are generally adjudicated within one day.

19. Warrant cases are those related to an offence punishable by death (although in December 1992, the Government commuted all death sentences to a life term), transportation (commutation) or imprisonment for a period of more than six months. The procedure for these cases is contained in Chapter XXI of the Code of Criminal Procedure. The case of the prosecution is heard first. Then the defence may be heard. There is a right to recall and cross-examine witnesses, all evidence should be taken in the defendant's presence or in some cases, when this right is dispensed with by the Code of Criminal Procedure, in the presence of the defendant's counsel. A language understood by the defendant must be used, and all proceedings must be recorded by the court. There is a right to not self-incriminate and there is no double jeopardy section (403). There is also the right to appeal.

C. Law Safeguarding the State against the Dangers of Subversive Elements

20. The Law Safeguarding the State against the Dangers of Subversive Elements was enacted in 1975. Under this law, the Council of Ministers may pass an order as may be necessary, restricting any fundamental right of a citizen if there are reasons to believe that he has committed or is committing or is about to commit any act which infringes the sovereignty and security of the State or public peace and tranquillity. To exercise such power, the Council of Ministers has formed a Central Body consisting of the Minister for Home Affairs, the Minister for Defence and the Minister for Foreign Affairs. These policies and guidelines to be adhered to in restricting the fundamental rights of citizens are laid down in section 9 of the law.

21. The Central Body is imbued with the following powers:

(a) Arresting and detaining a person against whom action is taken for a period not exceeding 60 days at a time, for a total of up to 180 days;

(b) Restraining a person against whom action is taken for up to one year.

22. If it becomes necessary to extend the period of detention or restraint, the Central Body may be authorized by the Council of Ministers to detain or restrain a person for a period not exceeding one year at a time, for a total of up to five years. Restrictions as to movement, residence and possession of articles is permitted under this law.

D. Repatriation of Muslims of Myanmar

23. The Special Rapporteur has been informed that through recent discussions between the Government of Myanmar and the United Nations High Commissioner for Refugees, it has been agreed, in principle, that the United Nations Office of the High Commissioner for Refugees (UNHCR) will soon be allowed to establish a presence in the Rakhine State. The purpose of the presence of UNHCR will be to assist and coordinate the voluntary repatriation and safe resettlement of the persons from Myanmar returning from the UNHCR-assisted camps in Bangladesh.

24. Other information received regarding the situation of repatriated persons includes reports that in some cases the returnees have been allowed to go back to their original villages. Other reports indicate that some of the villages, largely built of mud, disintegrated during the absence of the inhabitants, and that for this reason, they have in some cases, taken up residency in other villages. Still other reports indicate that during the absence of these persons, some of their homes and villages were appropriated by the military or others from the Rakhine State, and thus, upon their return, some of the Muslims of Myanmar were forced to take up alternative residency.

E. Social and economic rights

25. The Special Rapporteur has been informed that all schools and institutions of higher learning have now been reopened and have remained open throughout the normal term.

IV. RESPONSE BY THE GOVERNMENT OF MYANMAR TO THE MEMORANDUM OF THE SPECIAL RAPPORTEUR

26. By a note verbale dated 17 October 1993, the following response was received from the Government of Myanmar to the memorandum of allegations of the Special Rapporteur:

"A. Arbitrary detention

"Reference to paragraph 2

"1. Legal Action was taken against U Aung Myint, aged 57, Daw Khin Mar Aye, aged 53, and Htay Myint (alias) Khin Soe, aged 37, for distribution of seditious leaflets which could be detrimental to the security of the Union and maintenance of public law and order in accordance with section 5(i) of the 1950 Emergency Provisions Act.

"Reference to paragraphs 3 and 4

"2. Legal Action was taken against the following persons:

(a) Dr. Aung Khim Sint

(b) U Than Min

(c) Ma Thi Da

(d) Nay Tin Myint

(e) Bo Lay

(f) Thet Oo

(g) Tin Htun

(h) Khin Maung

(i) Kyaw Than

(j) Kyi Myint

(k) Than Myint

"for infringing the existing laws. Each person has been charged and is being prosecuted in the Yangon Division Law Court presided over by two Divisional Judges.

"3. In the Union of Myanmar, arrest or detention of a person is made in accordance with the provisions contained in the Criminal Procedure Code enacted in 1898. The person concerned is formally charged and defended by a Legal Counsel; and a fair trial is conducted by a competent court. He has the right to appeal. The details concerning arrest or detention and trial of cases are appended herewith.

"4. The following are the detailed charges against the persons mentioned in the summary of allegations received:

	Name of defendant	Charges
(a)	Khin Maung (alias) Nyi Nyi	Unlawful Association Act 17 (1)
(b)	Than Min (alias) Tin Tun Aung	Charges against 11 persons - (a) to (k) - are Unlawful Act 17 (1) - distribution and dissemination during 1993 in Yangon Division of literature
(c)	Thet Oo	and leaflets issued by terrorist groups.
(d)	Ko Lay (alias) Aung Naing Oo	1950 Emergency Provisions Act 5 (i)
(e)	Nay Win (alias) Nay Tin Myint	Action which could be detrimental to the security of the Union, and maintenance of public law and order: distribution and dissemination of
(f)	Lwin Oo	literature and leaflets.
(g)	Kyaw Than	Section 17/20 of Registration of Printers and Publishers Law
(h)	Ma Thida	
(i)	Han Sein	Infringement of this law for illegal action mentioned above.
(j)	Kyi Myint	
(k)	Tin Tun (alias) Rashid	

	Name of defendant	Charges
(a)	Dr. Aung Khin Sint	1950 Emergency Provisions Act 5 (i)
(b)	U Than Min (alias) Tin Tun Aung	Both were found to have instigated the delegates attending the National Convention by surreptitious means to cause disruption and disorder among the delegates. Both of them distributed leaflets in May 1993 fraudulently under the name of "monks and laity". Section 17/20 of Registration of Printers and Publishers Law The infringement of this Law for illegal action mentioned above, including letters of threat to the delegates.
(a)	Dr. Aung Khin Sint	The Burma Official Secret Act. Section 5 (1) (4) He infringed the above Law by making use of an official document in committing the above-mentioned illegal acts.

"B. Matters concerning arrests or detention and trial of cases

[The Government of Myanmar also included in its report an explanation of the pertinent laws regarding arrests or detention and trial of cases. These laws have been summarized in paras. 14 to 22 above.]

"C. Disappearance

"5. Allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons including students, monks, workers, writers, professors and others were arrested or shot to death and that the whereabouts of many of these have never been established; that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an army base near the airport and in the new Hlaingthaya Township are totally false and unfounded.

"6. Under the existing laws, organizations empowered to arrest any person who has committed an offence maintain a register of persons arrested by them in accordance with the law, and reports have to be submitted to the relevant authorities concerning such arrests.

"7. Under the existing laws of Myanmar, no one can be arrested and detained if it is not in accordance with the law. It is provided in section 61 of the Code of Criminal Procedure that no police officer shall detain in custody a person arrested, for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, a special order of a Magistrate has to be obtained under section 167 of the Code of Criminal Procedure. If an arrest which is not in accordance with the law is made, the person making the arrest is liable to be punished under sections 341 to 348 of the Penal Code.

"8. In the case of the death of any person, it is mandatory to state the cause of death on the death certificate. In cases where the cause of death is not yet known, the police has to forward a report of the case to a magistrate under section 174 of the Code of Criminal Procedure, and the magistrates are empowered to hold inquests under section 176 of the Code of Criminal Procedure to make known the cause of death.

"D. Summary or arbitrary executions

"9. All the allegations stated under this heading are totally false and unfounded. While undertaking our three main causes, which are non-disintegration of the union, unity and solidarity of the national races and perpetuity of sovereignty, the Tatmadaw has never, at any time committed such atrocities nor will it ever do so in future. There have been numerous cases running into thousands where the Tatmadaw, even in skirmishes with the insurgents, have treated captured persons very well and then handed them over to the police for prosecution for the offences committed. Atrocities such as demanding rice, livestock or money from villagers, rape of rural women, forced conscription and mass execution of villagers are being committed only by the insurgents time and again. It is believed that these allegations are based upon false information given by the insurgents, persons communicating with insurgents and persons who are endeavouring to bring down the government of the State Law and Order Restoration Council.

"E. Repatriated Muslims from Northern Arakan State

"10. In pursuance of the agreement reached between the Union of Myanmar and the People's Republic of Bangladesh, repatriation of the Myanmar residents in Bangladesh started on 22 September 1992. For the facilitation of systematic and orderly repatriation, five reception centres, namely, Taungbro, Ngakhura, Pyinphyu, Kanyinchaung and Magyichaung, were established on the Myanmar side on 15 May 1992. Since 22 September 1992, a total of 9,209 households and 41,098 persons, comprising 20,103 males and 20,995 females, were repatriated as at 12 October 1993.

"11. The returnees were resettled in their original villages. They were not sent to other places and were not resettled to the regions other than their own villages or origin. At present, for the development of the country, priority is being given to the development of border areas and national races. In implementing the development programmes, the people in

the border areas contributed their voluntary labour of their own accord. It is the custom and culture of indigenous races of Myanmar to give voluntary services in nation-building works.

"12. The State had spent 100 million kyats for the development of border areas and national races in the Buthidaung and Maungdaw regions in Rakhine State. The Muslims in Rakhine State give voluntary services of their own accord to the development of border areas. They were neither forced to serve as porters nor hard labourers. Therefore there are no grounds whatsoever for those complaints. The voluntary services given by the people in the regions were stopped in 1991. After that, delegations of the United Nations, UNHCR and Bangladesh visited the villages of the returnees for first-hand knowledge of the situation.

"13. Without legal permission, no one is allowed to cross the borderline. The Muslims in Rakhine State had crossed the borderline without legal permission.

"F. Labour rights

"14. With regard to the comments and observations made during the course of the 80th Session of the International Labour Conference in the Committee on the Application of Standards held at Geneva in June 1993, the following is a reply to those comments in a question and answer form:

"Q. There continues to be no freedom of association in the country or hardly any trade union movement.

"A. The Government is in no way whatsoever exercising prohibition or restriction in this matter. No restrictive legislation has been promulgated. Many associations are operating such as medical doctors and nurses associations, arts and crafts associations, artists and artistes associations, reporters and journalists associations and the like.

"Q. Trade unionists who criticized the Government were allegedly imprisoned. Members of Parliament freely elected in May 1990 had not been allowed to convene, many were in prison, had been disqualified or had fled the country.

"A. Those who are imprisoned are the people who had committed crimes, not the trade unionists. The allegation does not bear any iota of truth. Only those who had committed crimes were sent to prison, and the criminals and those who breached the law fled to the country so as to escape the legal proceedings and punishment.

"15. As regards the accusation of 'a clear infringement of the Convention', the Government of the Union of Myanmar had already reported and stated at several ILO sessions since 1989 that 'with the abolition of the one-party political system, the Unitary Workers' Organization no longer exists and that the said 1976 legislation organizing the single trade union system has automatically become obsolete'. How can extinct legislation

infringe the provisions of the Convention when there is no longer a monopoly of trade union rights and the practice of such activities in a country? Hence, no infringement of the Convention. The Trade Union Act of 1926 is still in existence, and since it has become old, new legislation has been drafted and submitted to the concerned authority for vetting and scrutiny. A new Trade Union Act will come into being in the not too distant future.

"Q. Please indicate:

(a) What measures have been taken to comply with the obligations undertaken under ILO Convention No. 87;

(b) What workers rights are protected under present legislation;

(c) What lawful trade unions or other syndicates presently exist.

"A. (a) The reply to (a) is in the last paragraph (see para. 15 above)

(b) and (c) Workers are enjoying many rights, such as social security, under the Social Security Act, 1954; compensation, under the Workmen's Compensation Act, 1923; leave and holidays, under the Leave and Holidays Act, 1951; welfare, health and safety under the Factories Act, 1951; and other rights under present, existing labour legislation.

"G. Forced portering and forced labour

"16. Concerning the allegation of the continued use of forced portering and forced labour, a brief explanation is required. The International Confederation of Free Trade Unions (ICFTU) had made a representation under article 24 of the ILO Constitution, alleging non-observance of the Forced Labour Convention No. 29, 1930. The Governing Body of ILO considered receivability and the representation was set up, comprising Ms. L. Caron (Government member, Canada), Mr. B. Noakes (Employer member, Australia) and Mr. P. S. Sundaram (worker member, Sri Lanka). On 4 March 1993, the said Committee asked to supply observations on the representation and a statement of observations had been presented to the Committee. The Myanmar delegation to ILO had personally appeared before the Committee in June 1993 and presented a rebuttal. But the Committee further requested detailed information on the matter.

"17. In compliance with the request of the Committee, a detailed report has been prepared after fielding the three independent observation teams to the areas mentioned in the ICFTU allegation to find out the truth of the matter. The areas visited by the independent observation teams were:

"(a) Ok Ta Da Village in Mon State (traced in Paung Township);

"(b) Moe Kaung Village in Mon State (traced in Thaton Township);

"(c) Thein Yazat Village in Mon State (traced in Kyaikto Township);

"(d) Pyu Township in Bago (Pegu) Division;

"(e) Hline Bwe Township, Kayin (Karen) State.

"18. The findings of or the testimonies obtained by the three observation teams revealed that what have been alleged proved to be no better than the preconceived fabrication of false accounts intended to invite misconception and misunderstanding. A detailed statement to that effect is to be presented to the above-mentioned Committee of ILO very soon.

"H. Rights of the child

"19. In acceding to the Convention on the Rights of the Child in July 1991 the Union of Myanmar had made reservations relating to articles 15 and 37 of the Convention. Arrangements are being made by the Myanmar authorities concerned to withdraw the reservations made on these two articles.

"I. The National Convention

"20. In its Declaration No. 11/92 of 24 April 1992, the State Law and Order Restoration Council declared that it would convene a National Convention within six months and that it would meet within two months with the leaders of representatives-elect of the political parties and independent representatives-elect.

"21. A 15-member Steering Committee was formed on 28 May 1992 to coordinate with the representatives-elect concerning the convening of a National Convention.

"22. In accordance with Order No. 9/92 of 28 May 1992, the following political parties and an independent representative-elect were represented at the Coordinating Meeting, held from 23 June to 10 July 1992:

	Name of party	Number of representatives
(a)	National League for Democracy	15
(b)	Shan Nationalities League for Democracy	6
(c)	National Unity Party	3
(d)	Union Poah Nation Organisation	1
(e)	Mro (or) Khami National Solidarity Organisation	1
(f)	Shan State Kokang Democratic Party	1
(g)	Lahu National Development Party	1
(h)	Independent Representative	1

"Selection of National Convention Delegates

"23. At the Coordinating Meeting it was decided that delegates attending the National Convention should be classified under eight categories of representatives. They are:

Categories	Number of persons
1. Representatives from political parties	49
2. Representatives-elect	107
3. Representatives of national racial groups	215
4. Representatives of peasants	93
5. Representatives of workers	48
6. Representatives of the intelligentsia and Technocrats	41
7. Representatives of State Service Personnel	92
8. Other invited personages	57
	702

"Categories 3 to 5: representatives of national races, peasants and workers

"24. In nominating delegates under categories 3 to 5 to represent the national races, peasants and workers, selection committees comprising 15 members each for State/Division, District and Township levels were formed. Each committee was chaired by a Governmental General Administrative Officer and other members were from the administrative departments concerned and had an intimate knowledge of national racial groups, peasants and workers, as well as local personages who had earned the respect and trust of the national racial groups, peasants and workers.

"Category 6: representatives of the intelligentsia and technocrats

"25. In nominating delegates to represent the intellectuals and the intelligentsia, selection committees composed of senior administrative officials, academicians and intellectuals were formed.

"Category 7: representatives of State Service personnel

"26. In nominating delegates to represent the State Service personnel, selection bodies were formed at various Government ministries and departments to select the delegates.

"Category 8: other invited personages

"27. Of the 57 personages invited to attend the National Convention, 38 were representatives from 8 special regions of 8 armed groups who have returned to the legal fold to join hands with the Government in carrying out the border area development programmes being implemented by the Government.

"28. The remaining 19 invitees were personages who are well known for their political, economic, social and administrative experience.

"29. From the foregoing it is apparent that the delegates under categories 3 to 8 were not, repeat not, chosen by the State Law and Order Restoration Council.

"Selection of the panel of chairmen

"30. At the National Convention it was decided after due consultation that each category would nominate five delegates to act as Chairmen in the deliberations. Since there were eight categories, 40 delegates were nominated to serve on the panel of chairmen. Accordingly, delegates under category 1 (representatives from political parties) and delegates under category 2 (representatives-elect) were entitled to be represented by 10 delegates as Chairmen on the Panel. As a large majority of the delegates under category 1 and category 2 represented the political parties, and with a view to maintaining and nurturing unity and amity among the 10 political parties, it was decided that each political party should nominate a delegate to serve on the Panel of Chairmen. Hence, each of the 10 political parties was able to nominate a delegate on the Panel. Accordingly, U Tha Zan Hla of the National League for Democracy is one of the Chairmen on the Panel to represent his own party.

"Objectives of the National Convention

"31. The purpose of convening the National Convention is to lay down the basic principles for the elaboration of a new and enduring democratic State Constitution. As such, there is no place for playing party politics or for party propaganda, as those can be detrimental to the unity prevailing among the delegates and, above all, it can defeat and jeopardize the objectives of the National Convention.

"32. The principles of non-disintegration of the Union, national solidarity, national sovereignty, establishment of a multi-party democratic system and the universal values of justice, liberty and equality are universally accepted general principles. And the Tatmadaw has played a crucial role throughout Myanmar's contemporary history. In the struggle for independence the Tatmadaw fought hand-in-hand together with the people, a struggle in which many indigenous Myanmar national races participated. Born out of national struggle for national independence some 50 years ago, the Tatmadaw follows the tradition of serving the people's interests loyally and faithfully. The Tatmadaw has played an important role not only in the struggle for national independence but also in preventing the Union from disintegrating in times of crises and in safeguarding national sovereignty and integrity. In 1948 and 1949, in 1958, 1962 and 1988 the Tatmadaw was called upon to shoulder national responsibilities to protect and safeguard the nation. As it represents the single disciplined organization in the nation, it is incumbent upon it to play a leading role in national politics. It is therefore only natural that in the transformation of one system to another the Tatmadaw should also take part in the political process of the country. Its participation in this process is in consonance with the national aspirations of the people.

"Badges, distribution of leaflets etc.

"33. There were no restrictions whatsoever with regard to wearing badges. In fact, various delegates representing various political parties wore their badges. Also, there were no restrictions regarding distribution of leaflets and dissemination of propaganda which did not go beyond the framework of the six objectives.

"Alleged disqualification or arrest of some delegates

"34. The sweeping allegations that numerous participants were disqualified or arrested for various reasons are totally false. Out of all the delegates attending the National Convention, action was taken against the following five delegates:

"(a) The names of U Aung Htoo and Dr. Aung Khin Sint of the National League for Democracy were struck from the list of delegates representing the National League for Democracy. This action was carried out at the request of the National League for Democracy itself;

"(b) Legal action was taken against U Maung Maung, who represented one of the national racial groups, for infringement of existing laws;

"(c) A representative from Pekhon constituency was disqualified as he became involved in and joined a terrorist group;

"(d) The name of U Maung Ngwe of the Union Paoh National Organization was struck from the list of delegates as he passed away on 25 April 1993.

"J. Rights devolved from citizenship status

"35. The weakness of the Union Citizenship Act (1948), enacted after Myanmar gained independence, became evident with the passage of time. Thus, the Union Citizenship Act (1948) was revoked and the Myanmar Citizenship Law was promulgated on 15 October 1982. Under the new Myanmar Citizenship Law, there are three categories of citizen, namely, citizen, associate citizen and naturalized citizen. The rights to be enjoyed by those citizens and the punishment if citizenship is acquired through unlawful means, the decision-making body, the right to appeal, the right of defence against action taken and the right to clarify in case of doubt in the citizenship are clearly mentioned in the Law section-by-section. Thus, the complaints made about the Myanmar Citizenship Law are not valid.

"36. A total of 82,541 foreigners were granted citizenship under the Union Citizenship Act (1948). Under the new law, 19,290 associate citizenships and 1,245 naturalized citizenships were granted to a total of 20,535 foreigners. The remaining cases are under scrutiny for further processing.

"37. The right to study for basic education at the primary, middle and high school levels is given, even to foreigners. The citizens and the foreigners residing permanently in Myanmar-Naing-Ngan have the right to study for higher education. The right to study for professional lines at

institutes of medicine, technology, etc. is given only to those whose parents are citizens and who themselves are citizens, as is the case in other countries. Every citizen can work for his or her livelihood and enjoys benefits without any discrimination. Every citizen is free to travel to any place in the country, however, it is necessary for him or her to carry a citizen identity card, issued by the authorities, while travelling."

V. PRELIMINARY OBSERVATIONS

27. The Special Rapporteur welcomes the cooperation of the Government of Myanmar in responding to the memorandum of allegations and in agreeing to the visit of the Special Rapporteur from 9 to 16 November 1993, and expresses the hope that he will be accorded free and confidential access to all persons he deems useful in carrying out his mandate.

28. In regard to arrests and detentions, the Special Rapporteur has noted that over 1,000 persons detained during the mass demonstrations of 1988 and 1990 have now been released; however, arrests of many persons attempting to voice political dissent have been reported in 1993.

29. Although martial law was lifted in December 1992, the persons cited (see para. 13 above) were all arrested in 1993 in Yangon under still existing emergency decrees, such as the Unlawful Association Act 17 (1), the 1950 Emergency Provisions regarding acts detrimental to the security of the Union, section 17/20 of the Registration of Printers and Publishers Law and sections 5 (1) and (4) of the Burma Official Secret Act. They have been tried in civilian courts, but for offences under these emergency laws.

30. The legal causes of action against these persons (based on existing emergency legislation and SLORC decrees) appear to have arisen from their publication or circulation of documents pertaining to the process of the National Convention or for their criticism of the National Convention. However, the Special Rapporteur has not been informed what the specific acts are which constitute the crimes.

31. The above-mentioned existing laws place severe restrictions on freedom of expression, prohibit assembly of more than five persons in any one place, prohibit all criticism of the State Law and Order Restoration Council, the army (Tatmadaw) and the proceedings and content of the National Convention.

32. Further information provided to the Special Rapporteur concerning the trials of these and other persons, indicates that legal counsel was put at the disposal of the defendants. It is not clear how counsel was chosen, what the affiliation was of the lawyers provided or what role the lawyers had been permitted to carry out before, during or after the trials. It was further reported that the trials that had taken place had not been open, as is normally prescribed by law.

33. The Special Rapporteur has been informed that the persons tried at Insein Prison on 11 October 1993 have been sentenced to 20 years of imprisonment. Among these is Aung Khin Sint, National League for Democracy elected-member of

Parliament and representative to the National Convention. His assistant, Than Min, was also arrested and tried for circulating illegal documents "issued by terrorist groups", in which delegates were asked to recall their responsibilities. He has reportedly been sentenced to 20 plus 18 additional years of imprisonment. It is not known whether appeals to a higher court have been or will be permitted in these cases.

34. The Special Rapporteur requests the Government of Myanmar to allow an international presence at any possible future trials concerning the persons cited above or of others tried under the emergency decrees. The Special Rapporteur urges the Government of Myanmar to release Daw Aung San Suu Kyi and to ensure that there are no threats or acts of intimidation or reprisal towards her.

35. In regard to torture and cruel, inhuman or degrading treatment, the Special Rapporteur received numerous allegations that this practice has continued to occur in the Union of Myanmar. It arises in a number of contexts. During interrogation, the practice is said to be routine and takes the form of poor sanitary conditions, being shackled, beatings, sleep, food and water deprivation, electric shock, the use of falanga, near suffocation, and psychological torture, including threats of death to the individual and his family. During forced portering and forced labour, the practice includes beating, kicking, burning, whipping, sleep, food and water deprivation, denial of medical treatment, carrying heavy loads in rugged terrain and in extreme temperatures. The repeated rape of women has been alleged. In some cases it has reportedly been carried out as a method of reprisal. During forced relocations in the context of military operations, similar forms of torture have been reported.

36. Numerous cases of disappearances alleged to have occurred in 1988 and in December 1991, reportedly remain unclarified. It is alleged that the whereabouts of hundreds of persons, including monks, workers, writers, professors and others, have never been established, and it is believed that some remain in unacknowledged detention, while others may have been killed and buried in mass graves. The Government has not indicated whether legal or administrative procedures for the purpose of clarification, such as habeas corpus petitions, are available to the relatives of the missing persons, and if available, how many times in the last year these remedial procedures have been used and to what effect. Disappearances have most frequently occurred since the last visit to the Union of Myanmar by the Special Rapporteur, in the context of recruitment for forced labour and forced portering.

37. The Government has stated that under the existing laws disappearances cannot occur because all detentions and arrests must be carried out in accordance with the law, which requires a register of all detainees to be kept and submitted to the relevant authorities.

38. As stated in his report to the Commission on Human Rights at its forty-ninth session, the Special Rapporteur took note of the fact that all death sentences had been commuted to life imprisonment. Nevertheless, reports continue to be received of extrajudicial executions carried out by the army (Tatmadaw) in the context of forced portering and labour, and carried out most frequently against ethnic minorities. The reports focused on executions of

civilians accused of insurgency, of those refusing to be recruited for portering or other labour, or killed in reprisal for others refusing recruitment or, in some cases, for another village refusing relocation.

39. The Government reply in regard to extrajudicial executions indicates that it is mandatory to state the cause of death on the death certificate. If the cause of death is not known, the police are required to forward a report to a magistrate, who has the discretionary power to hold inquests into the cause of death.

40. The Government stated that all allegations regarding summary or arbitrary executions were totally false and unfounded and that while undertaking the three main causes: non-disintegration of the Union, unity and solidarity of the national races and perpetuity of sovereignty, the Tatmadaw, "has never, at any time committed such atrocities nor will it ever do so in the future". The Government stated its belief that these allegations "are based upon false information given by insurgents, persons communicating with insurgents and persons who are endeavouring to bring down the Government of the State Law and Order Restoration Council".

41. Over 35,000 Myanmar Muslims who had fled to Bangladesh from Northern Rakhine State have now returned or repatriated. The repatriations took place with the participation of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Special Rapporteur has received numerous and varied reports concerning the conditions of resettlement. Some reports have indicated that they have not been allowed to return to their villages of origin and have been resettled in villages set up by the Government. Other reports indicate that many of the villages of origin were appropriated by military personnel and/or by Burmese civilians. Still other reports state that they have been allowed to return to their original villages but that in some cases, the homes (constructed mostly of mud), had fallen apart during their prolonged absence.

42. The residency and citizenship status of the returnees remain unclear, and most have not received identification cards. The Special Rapporteur was told that they were not entitled to freedom of movement, to enrol in institutions of higher learning or to take up certain professions.

43. The Government replied that they had been resettled in their original villages and that "priority is being given to development of border areas and national races". Since 22 September 1992, a total of 9,209 households and 41,098 persons had been repatriated as at 12 October 1993.

44. The Special Rapporteur is pleased to note that through recent discussions between the Government of Myanmar and the UNHCR, it has been agreed, in principle, that UNHCR will soon be allowed to establish a presence in the Rakhine State. The purpose of the presence of UNHCR will be to assist and coordinate the voluntary repatriation and safe resettlement of the persons of Myanmar returning from the UNHCR assisted camps in Bangladesh.

45. It has been reported to the Special Rapporteur that there has been no progress made in allowing freedom of association or trade union activity and that a monopoly of trade union rights, as well as trade union activities, still

exists. The arrest of some labour activists was reported to the Special Rapporteur, as was the continued practice of forced labour.

46. The Government responded that the people in the border areas contribute their voluntary labour and that it is the custom and culture of indigenous races of Myanmar to give voluntary services in nation-building works. In regard to Muslims in Rakhine State, the Government stated that "they give voluntary services to the development of border areas" and that "such voluntary service was stopped in 1991".

47. In regard to the Convention on the Rights of the Child and to reservations made by the Government relating to articles 15 and 37 of the Convention, the Government stated that arrangements are being made by the Myanmar authorities to withdraw the reservations on these two articles.

48. The Special Rapporteur has been informed that schools and universities were re-opened for the normal school term.

49. In regard to the National Convention for the drafting of a new constitution, no evident progress has been made towards turning over power to the freely elected civilian Government. The fifteen-member Steering Committee set out the agenda, the terms of reference and the topics to be discussed. Each of the eight categories represented at the Convention elected 5 delegates (total of 40 delegates) to be on the Panel of Chairmen to direct the Convention. Out of the ten nominees allowed the political parties and representatives-elect, one member of the National League for Democracy, the party that won 80 per cent of the vote in the national elections, has been named as a Chairman.

50. The Government stated that in the National Convention, there was no place for party politics or propaganda as those could be detrimental to unity and could defeat and jeopardize the objectives of the National Convention. Persons voicing dissent in regard to the National Convention have been arrested and sentenced to long prison terms.

51. The Government has stated that because the Tatmadaw had, inter alia, prevented the Union from disintegrating and had safeguarded national sovereignty and integrity, and as it represented the single disciplined organization in the nation, it was incumbent upon it to play a leading role in national politics and that "(I)n the transformation of one system to another the Tatmadaw should also take part in the political process of the country".

52. The Special Rapporteur plans to visit the Union of Myanmar from 9 to 16 November 1993 and Thailand from 16 to 20 November 1993, at which time he will have the opportunity to examine further these issues related to the situation of human rights in Myanmar.

Notes

1/ See E/CN.4/1993/37, paras. 69 and 70.

2/ Ibid., para. 242 (c).

3/ Ibid., para. 226.